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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,115	07/02/2003	Daniel Lee Holt	12929.1105US01	3914

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2200 WELLS FARGO CENTER
MINNEAPOLIS, MN 55402

EXAMINER

SUERETH, SARAH ELIZABETH

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/612,115

Applicant(s)

HOLT ET AL.

Examiner

Sarah Suereth

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6,8-12,15,17-19,26,27 and 29-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1,2,4,6,8-12,15,17-19,26,27 and 29-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 2, 4, 6, 8, 9, 11, 12, 15, 17, 18, 26, 27, and 29-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Binzer (5,299,558). Binzer discloses a fireplace having a combustion chamber 6, a combustion source 22, a vent system for venting exhaust gases (see figure 4) a flue connection member consisting of a plate portion 58 and 62 having a hollow cylindrical extending member above (unnamed part in figure 1), surrounding a first aperture, for attachment to a flue 4 and below 66 through seating member 64 for attachment to plate-like fireplace connection member 34. Plate portion 58 and 62 broadly define a U-shaped opening or notch for the tab 68 of the fireplace connection to extend into (best seen in Figures 5 and 6 as the missing sides of the plate) (col. 3, lines 54-56). The fireplace connection member 34 has a second aperture 36 and a movable latch 69 that extends over the flue connection member 58 and 62 to couple the flue connection member 58 and 62 to the fireplace connection member 34. Regarding method claims 26, 27, and 29-31, the apparatus anticipates the method of using it.
3. Regarding the limitation "an appliance connection member configured to be attached to the appliance" the Binzer apparatus is regarded as meeting this limitation because Figure 3 illustrates the apparatus mounted inside a fireplace.

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4. Regarding the limitation of "the second aperture including a seat", the MSN Encarta Online Dictionary defines a seat as: an object, part, or space on which something rests or into which it fits
(<http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861710519>, Accessed on 9/26/06 at 2:55 PM). Using the above definition, the Binzer aperture has a seat, regarded as the empty space inside of the aperture 36 (Figure 5).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Binzer (5,299,558).

7. Binzer does not disclose the flue connection means for a slant back type fireplace. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use the flue connection means of Binzer on a slant back fireplace.

8. Applicant disclosed: "the arrangement, shape, and configuration of the flue ducts or appliance can vary without affecting the application of the present invention. For example, the flue ducts could extend vertically or horizontally. Additionally, the flue ducts could extend vertically and then extend horizontally. Also, the flue ducts can be

desired in any number of shapes. They could be cylindrical, rectangular, or any other desired shape, size, or diameter of duct. The appliance itself can also be shaped in any manner and still benefit from the present invention" (P: 5, L: 23-30).

9. The Examiner interprets this statement to mean the design of the invention is not limited to slant back fireplaces. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well on a fireplace having a horizontal venting system because Applicant has stated that the invention could be used on a fireplace having a horizontal venting system. Therefore, it would have been an obvious matter of design choice to modify Binzer to obtain the invention as specified in claims 10 and 19.

Response to Arguments

10. Regarding applicant's argument that the Binzer extension member does not mate with a seat on a vent aperture, the examiner's interpretation of a seat is discussed above. Figure 5 clearly shows the lower portion of the extrusion member 66 being received inside the seat of the aperture 36.

11. Regarding applicant's assertion that Binzer does not show a tab received into an opening, the Examiner clarified the tab and opening in the rejection above.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

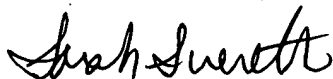
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

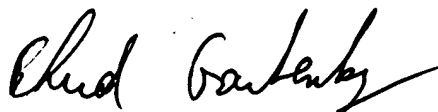
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah Suereth whose telephone number is (571) 272-9061. The examiner can normally be reached on Monday to Thursday 7:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (E BC) at 866-217-9197 (toll-free).


Sarah Suereth
Examiner
Art Unit 3749



EHUD GARTENBERG
SUPERVISORY PATENT EXAMINER